

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BR2

PLR-108039-12

Date:

April 13, 2012

Taxpayer =

Acquiring =

Corporation =

Date 1 =

Date 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to your request for a ruling, submitted by your authorized representative, dated February 22, 2012, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Taxpayer to file an election under § 1.1502-21(b)(3)(i) of the Income Tax Regulations (the "Election") to relinquish the entire carryback period with respect to a consolidated net operating loss ("CNOL") of the consolidated group of

which Taxpayer was the common parent for the short taxable year ending Date 2. The material information is summarized below. Throughout this letter, any reference to an action taken by Taxpayer after Date 2 or required to be undertaken by Taxpayer after Date 2 will be treated as a reference to an action by Acquiring, as successor-in-interest to Taxpayer.

Summary of Facts

On Date 2, Taxpayer merged with Acquiring in a transaction treated as a reorganization under § 368(a). Acquiring is a member of a consolidated group of which Corporation is the common parent. Prior to the merger transaction, Taxpayer was the common parent of its own consolidated group. As a result of the merger transaction, Taxpayer's separate consolidated group ceased to exist, its taxable year terminated on Date 2, and Taxpayer became a member of Corporation's consolidated group.

Taxpayer filed a separate short period consolidated return for the period between Date 1 and Date 2. Taxpayer intended to relinquish the carryback period for its consolidated group's CNOL on its tax return for the taxable year ending Date 2. For various reasons, a valid Election was not filed. Subsequent to Taxpayer filing the return, it was discovered that the Election had not been filed. Thereafter, Taxpayer submitted this request, under § 301.9100-3, for an extension of time to file the Election. Taxpayer has represented that it is not seeking to alter a return position for which an accuracy related penalty has been or could be imposed under § 6662 at the time Taxpayer requested relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) and for which the return position requires or permits a regulatory election for which relief is requested.

Taxpayer also represents that the consolidated group of which it was the common parent for the taxable year ending Date 2 has not, and will not, carry any portion of the CNOL back to a prior consolidated return year of the Taxpayer consolidated group. Taxpayer also represents that no member of the consolidated group of which Taxpayer was the common parent for the taxable year ending Date 2 had a separate return year, within the meaning of § 1.1502-1(e), at any time during the carryback period.

Section 1.1502-21(b)(3)(i) allows a group to make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election is made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." Section 1.1502-21(b)(3)(i) also provides that the statement must be filed with the group's income tax return for the consolidated year in which the loss arises.

Under § 301.9100-1(c) the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-21(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the Election, provided that Taxpayer shows it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government.

Information, affidavits, and representations submitted by Taxpayer, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the Election. See 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including representations made, we conclude that Taxpayer has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government. Accordingly, we grant an extension of time under § 301.9100-3, until forty-five days from the date on this letter, for Taxpayer to file the Election.

The above extension of time is conditioned on the Taxpayer's consolidated group's tax liability, its members' liability, and the tax liability of any consolidated group of which a member of Taxpayer's consolidated group becomes a member (if any) being not lower, in the aggregate, for all years to which the Election applies, and all subsequent years, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the amount of tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the federal income tax returns involved.

Taxpayer should file the election in accordance with § 1.1502-21(b)(3)(i). Taxpayer's consolidated group's return for the taxable year ending Date 2 must be amended to attach the election statement required by § 1.1502-21(b)(3)(i). A copy of this letter should be attached to the election statement. Alternatively, if Taxpayer files its amended return electronically, Taxpayer may satisfy this latter requirement by attaching to the return a statement that provides the date and control number (PLR-108039-12) of this ruling letter.

Caveats

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In addition, we express no opinion as to the tax effects or any other tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Taxpayer, Company Official, and Tax Professional. The appropriate Service office, however, should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: